



## Senate

General Assembly

**File No. 223**

*January Session, 2003*

Substitute Senate Bill No. 496

*Senate, April 8, 2003*

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

**AN ACT CONCERNING MINOR REVISIONS TO THE NEW HOME CONSTRUCTION ACT, THE HOME IMPROVEMENT CONTRACTOR ACT AND THE HOME SOLICITATION SALES ACT.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 20-417a of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2003*):

3 As used in this section, sections 20-417b to 20-417i, inclusive, and  
4 subsection (b) of section 20-421:

5 (1) "Certificate" means a certificate of registration issued under  
6 section 20-417b;

7 (2) "Commissioner" means the Commissioner of Consumer  
8 Protection or any person designated by the commissioner to  
9 administer and enforce this section, sections 20-417b to 20-417i,  
10 inclusive, and subsection (b) of section 20-421;

11 (3) "Contract" means any agreement between a new home  
12 construction contractor and a consumer for the construction or sale of a  
13 new home or portion of a new home prior to occupancy;

14 (4) "Engage in the business" means that the person engages in the  
15 business for the purpose of compensation or profit;

16 (5) "New home construction contractor" means any person who  
17 contracts with a consumer to construct or sell a new home or any  
18 portion of a new home prior to occupancy;

19 (6) "New home" means any newly constructed (A) single family  
20 dwelling unit, (B) dwelling consisting of not more than two units, or  
21 (C) unit, common element or limited common element in a  
22 condominium, as defined in section 47-68a, or in a common interest  
23 community, as defined in section 47-202;

24 (7) "Person" means one or more individuals, partnerships,  
25 associations, corporations, limited liability companies, business trusts,  
26 legal representatives or any organized group of persons;

27 (8) "Consumer" means the buyer or prospective buyer, or the  
28 buyer's or prospective buyer's heirs or designated representatives, of  
29 any new home or the owner of property on which a new home is being  
30 or will be constructed regardless of whether such owner obtains a  
31 building permit as the owner of the premises affected pursuant to  
32 section 29-263; and

33 (9) "Completion" means the stage of construction of a new home in  
34 which the new home construction contractor is in receipt of such new  
35 home's certificate of occupancy issued by the municipality in which  
36 such new home is constructed.

37 Sec. 2. Section 20-417e of the general statutes is repealed and the  
38 following is substituted in lieu thereof (*Effective October 1, 2003*):

39 In addition to any other remedy provided for in sections 20-417a to  
40 20-417i, inclusive, and subsection (b) of section 20-421, any person who

41 violates any provision of subsection (d) of section 20-417d [, except  
42 subdivision (7) of said subsection (d)] shall be guilty of a class A  
43 misdemeanor. Notwithstanding subsection (d) of section 53a-29 or  
44 section 54-56e, if the court determines that a contractor cannot fully  
45 repay any victim of the violations committed by the contractor within  
46 the period of probation established in subsection (d) of section 53a-29  
47 or section 54-56e, the court may impose probation for a period of not  
48 more than five years. Any person who violates the provisions of  
49 subdivision (7) of subsection (d) of section 20-417d shall be liable for  
50 treble damages.

51 Sec. 3. Subsection (b) of section 20-427 of the general statutes is  
52 repealed and the following is substituted in lieu thereof (*Effective*  
53 *October 1, 2003*):

54 (b) No person shall: (1) Present or attempt to present, as [his] such  
55 person's own, the certificate of another, (2) knowingly give false  
56 evidence of a material nature to the commissioner for the purpose of  
57 procuring a certificate, (3) represent himself or herself falsely as, or  
58 impersonate, a registered home improvement contractor or salesman,  
59 (4) use or attempt to use a certificate which has expired or which has  
60 been suspended or revoked, (5) offer to make or make any home  
61 improvement without having a current certificate of registration under  
62 this chapter, (6) represent in any manner that [his] such person's  
63 registration constitutes an endorsement of the quality of [his] such  
64 person's workmanship or of [his] such person's competency by the  
65 commissioner, (7) employ or allow any person to act as a salesman on  
66 [his] such person's behalf unless such person is registered as a home  
67 improvement salesman, or (8) fail to refund the amount paid for a  
68 home improvement within ten days of a written request mailed or  
69 delivered to the contractor's last known address, if no substantial  
70 portion of the contracted work has been performed at the time of the  
71 request and more than thirty days has elapsed since the starting date  
72 specified in the written contract, or more than thirty days has elapsed  
73 since the date of the contract if such contract does not specify a starting  
74 date.

75 Sec. 4. Section 42-135a of the general statutes is repealed and the  
76 following is substituted in lieu thereof (*Effective October 1, 2003*):

77 No agreement [of the buyer] in a home solicitation sale shall be  
78 effective against the buyer if it is not signed and dated by the buyer or  
79 if the seller shall:

80 (1) Fail to furnish the buyer with a fully completed receipt or copy  
81 of all contracts and documents pertaining to such sale at the time of its  
82 execution, which contract shall be in the same language as that  
83 principally used in the oral sales presentation and which shall show  
84 the date of the transaction and shall contain the name and address of  
85 the seller, and in immediate proximity to the space reserved in the  
86 contract for the signature of the buyer, or on the front page of the  
87 receipt if a contract is not used, and in boldface type of a minimum  
88 size of ten points, a statement in substantially the following form:

89 YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY  
90 TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER  
91 THE DATE OF THIS TRANSACTION. SEE THE ATTACHED  
92 NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF  
93 THIS RIGHT.

94 (2) Fail to furnish each buyer, at the time [he] such buyer signs the  
95 home solicitation sales contract or otherwise agrees to buy consumer  
96 goods or services from the seller, a completed form in duplicate,  
97 captioned "NOTICE OF CANCELLATION", which shall be attached to  
98 the contract or receipt and easily detachable, and which shall contain  
99 in ten-point boldface type the following information and statements in  
100 the same language as that used in the contract:

101

102 NOTICE OF CANCELLATION

103

104 .... (Date of Transaction)

105

106 YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY  
107 PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS  
108 FROM THE ABOVE DATE.

109 IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY  
110 PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE,  
111 AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL  
112 BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING  
113 RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE,  
114 AND ANY SECURITY INTEREST ARISING OUT OF THE  
115 TRANSACTION WILL BE CANCELLED.

116 IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE  
117 SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD  
118 CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO  
119 YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY, IF YOU  
120 WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER  
121 REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE  
122 SELLER'S EXPENSE AND RISK.

123 IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER  
124 AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY  
125 DAYS OF THE DATE OF CANCELLATION, YOU MAY RETAIN OR  
126 DISPOSE OF THE GOODS WITHOUT ANY FURTHER  
127 OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE  
128 TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO  
129 THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE  
130 FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE  
131 CONTRACT.

132 TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A  
133 SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE  
134 OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO  
135 .... (Name of Seller) AT .... (Address of Seller's Place of Business) NOT  
136 LATER THAN MIDNIGHT OF .... (Date)

137

138 I HEREBY CANCEL THIS TRANSACTION.

139 .... (Date)

140 ..... (Buyer's Signature)

141

142 (3) Fail, before furnishing copies of the "Notice of Cancellation" to  
143 the buyer, to complete both copies by entering the name of the seller,  
144 the address of the seller's place of business, the date of the transaction,  
145 and the date, not earlier than the third business day following the date  
146 of the transaction, by which the buyer may give notice of cancellation.

147 (4) Include in any home solicitation sale contract or receipt any  
148 confession of judgment or any waiver of any of the rights to which the  
149 buyer is entitled under this chapter, including specifically [his] such  
150 buyer's right to cancel the sale in accordance with the provisions of this  
151 section.

152 (5) Fail to inform each buyer, orally, at the time [he] such buyer  
153 signs the contract or purchases the goods or services, of [his] such  
154 buyer's right to cancel.

155 (6) Misrepresent in any manner the buyer's right to cancel.

156 (7) Fail or refuse to honor any valid notice of cancellation by a buyer  
157 and within ten business days after the receipt of such notice, to (A)  
158 refund all payments made under the contract or sale; (B) return any  
159 goods or property traded in, in substantially as good condition as  
160 when received by the seller; (C) cancel and return any negotiable  
161 instrument executed by the buyer in connection with the contract or  
162 sale and take any action necessary or appropriate to terminate  
163 promptly any security interest created in the transaction; and (D)  
164 cancel and return any contract executed by the buyer in connection  
165 with the transaction.

166 (8) Negotiate, transfer, sell, or assign any note or other evidence of  
167 indebtedness to a finance company or other third party prior to  
168 midnight of the fifth business day following the date the contract was  
169 signed or the goods or services purchased.

170       (9) Fail, within ten business days of receipt of the buyer's notice of  
171       cancellation, to notify [him] such buyer whether the seller intends to  
172       repossess or to abandon any shipped or delivered goods.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>

**GL**           *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note****State Impact:**

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Judicial Dept.; Criminal Justice, Div.; Pub. Defender Serv. Com.; Correction, Dept.	GF - None	None	None
Consumer Protection, Dept.	GF - None	None	None

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill extends protections to consumers under the New Home Construction Act by making it a crime if, under certain circumstances, a new home construction contractor fails to return a deposit. This change is not expected to have an impact on criminal justice agencies since few offenses occur under current law. (One offense was recorded in FY 02, no fines were imposed and no one was incarcerated.) Any impact, if at all, that this bill could have on the Department of Consumer Protection would be minimal.



**OLR Bill Analysis**

sSB 496

**AN ACT CONCERNING MINOR REVISIONS TO THE NEW HOME CONSTRUCTION ACT, THE HOME IMPROVEMENT CONTRACTOR ACT AND THE HOME SOLICITATION SALES ACT****SUMMARY:**

This bill extends protections afforded consumers under the New Home Construction Act to contracts for the sale or construction of a new home, or a portion of a new home, before it is occupied. It extends the act's protections to owners of property on which a new home is being, or will be, built, regardless of whether the property owner obtains a building permit as the owner of the affected premises. It makes it a class A misdemeanor, punishable by up to one year in jail and a \$2,000 fine, for a new home construction contractor to fail to refund a deposit in certain circumstances. It also makes clarifying and technical changes.

EFFECTIVE DATE: October 1, 2003

**CONTRACTOR'S FAILURE TO REFUND A DEPOSIT*****Penalty for Failure to Refund a Deposit***

Current law requires a new home construction contractor to refund a deposit within 10 days following the mailing or delivery of a written request delivered to his last-known address, if (1) the consumer has complied with the terms of the written contract; (2) no substantial portion of the contractual work has been performed at the time of the request; (3) more than 30 days have elapsed since the starting date specified in the written contract, or more than 30 days have elapsed since the date of the contract, if no starting date is specified; and (4) the contractor has failed to provide the consumer with a reasonable explanation for his failure to perform a substantial portion of the contracted work. The bill makes the contractor's failure to refund a deposit in these circumstances a class A misdemeanor. By law, he is already liable for treble damages.

***Substantial Portion of the Contracted Work***

By law, “a substantial portion of the work” includes work the contractor performs to (1) secure permits and approvals; (2) redraft plans or obtain engineer, architect, surveyor or other approvals for changes the consumer requests, or site conditions discovered after the contract’s execution make necessary; (3) schedule site work or arrange for other contractors to perform services related to the new home’s construction; and (4) do any other work the contract refers to as a “substantial portion of the contracted work.”

## **BACKGROUND**

### ***New Home Construction Act***

The law requires new home construction contractors to register with the Department of Consumer Protection, make certain disclosures, and include their registration number in all advertisements. It prohibits anyone from (1) presenting another’s registration as his own; (2) knowingly giving false material evidence to the commissioner in order to register; (3) impersonating a registered individual; (4) using an expired, suspended, or revoked registration; (5) making or offering to make home improvements without being registered; (6) representing that registration constitutes state endorsement; or (7) failing to refund a deposit as required by the act. It imposes criminal penalties for violations of its provisions. The act applies to anyone who contracts with a consumer to build a new home, or a portion of one, before it is occupied. A new home is a newly built single-family dwelling; any dwelling of up to two units; or a unit, common element, or limited common element of a condominium or common interest community.

## **COMMITTEE ACTION**

General Law Committee

Joint Favorable Substitute

Yea 17      Nay 0